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# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

THE UNITED STATES OF AMERICA, PETITIONER

vs.

PAUL DAVID SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 5, 1946
CERTIORARI GRANTED MAY 13, 1946

FILED MARCH 5, 1946

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1945

## No. 914

## PAUL DAVIS SHERIDAN, PETITIONER

vs.

## THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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1 In United States District Court, Eastern District of Michigan

*Docket entries*

1944

Oct. 27—Indictment filed.

Oct. 27—Report of Grand Jury filed.

Nov. 2—Defendant arraigned, has counsel, Allan W. Thompson, waives reading, stands mute. Plea of not guilty entered. Bond fixed at $2,000.00. Remanded.

Nov. 7—Appearance of Defendant by LeRoy Payne, et al., attorneys filed.

Nov. 17—Resignation of Attorneys for defendant filed.

Nov. 29—Jury trial begins. Jurors empaneled and sworn. Continued to November 30, 1944.

Nov. 29—Waiver of assignment of counsel filed.

Nov. 30—Jury trial resumed. Defendant appearing in proper. Witnesses sworn. Argument of counsel. Charge of Court. Verdict of jury: Guilty as charged on all three counts.

Nov. 30—Defendant sentenced to imprisonment for five years on each of 3 counts to run concurrently. Commitment issued.

Dec. 2—Motion for new trial filed.

Dec. 12—Motion for new trial filed.

Dec. 12—Affidavit in opposition to defendant's motion for new trial filed.

Dec. 12—Order denying defendant's motion for a new trial filed and entered.

Dec. 12—Notice and grounds of appeal filed.

1945

Jan. 8—Commitment returned and filed.

Feb. 10—Certified copy of order of Circuit Court of Appeals granting leave to proceed in forma pauperis, filed.

2 In the District Court of the United States for the Eastern District of Michigan, Southern Division

No. 27992 (of the June Term, A. D., 1944)

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

PAUL DAVIS SHERIDAN, ALIAS P. H. D. SHERIDAN, ALIAS PAUL H. SHERIDAN, ALIAS A. J. SLOANE, ALIAS PHILIP H. SLOANE, ALIAS ARTHUR SLOAN, ALIAS ANDREW SLOANE, JR., ALIAS LAIRD H. MCDONALD, ALIAS DONALD HOUGH, DEFENDANT

Vio. Section 415 U. S. C. Title 18 (Transportation in Interstate Commerce of Falsely Made or Forged Securities)

*Indictment*

Filed October 27, 1944

The Grand Jurors of the United States of America empaneled and sworn to inquire in and for the body of the Southern Division of the Eastern District of Michigan, upon their oaths present: That heretofore, to wit: On the 19th day of July A. D. 1943, at the City of Jackson, County of Jackson, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, late of the Division and District aforesaid, did unlawfully, wilfully, knowingly, and feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce, from the City of Jackson, in the State of Michigan to the City of Cape Giradeau, in the State of Missouri, a certain falsely made, forged, altered, or counterfeited security to wit: A check in the amount of sixty two dollars and fifty cents ($62.50) payable to P. H. D. Sheridan and purporting to be signed as maker U. S. E. F. C., 14A A. J. Davis, Commissioner, the said check being drawn on the First National Bank, Cape Giradeau, Missouri, he the said defendant then and there well knowing the same to have been falsely
3 made, altered, forged, or counterfeited: Contrary to the form, force, and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

COUNT TWO

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit, on the 19th day of July A. D. 1943, at the City of Jackson, in the County of Jackson in the Southern Division, of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, did unlawfully, wilfully, knowingly, feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the City of Jackson, in the State of Michigan, to the City of Cape Giradeau, in the State of Missouri, falsely made, forged, altered, or counterfeited security to wit: A check in the amount of sixty two dollars and fifty cents ($62.50) dated July 15, 1943, drawn on the First National Bank, Cape Giradeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by U. S. E. F. C.#14A A. J. Davis, Commissioner, he the said defendant then and there well knowing the same to be falsely made, altered, forged or counterfeited: Contrary to the form, force, and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

COUNT THREE

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit, on the 19th day of July A. D. 1943, at the City of Jackson, in the County of Jackson, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan,
4 alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, did unlawfully, wilfully, knowingly, feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the City of Jackson, in the state of Michigan to the City of Boston, in the State of Massachusetts, a certain falsely made, forged, altered, or counterfeited security to wit: a check in the amount of fifty dollars ($50.00) dated July 18, 1943 drawn on the First National Bank of Boston, Massachusetts, payable to "cash" and signed as maker by P. H. D. Sheridan, he the said defendant then and there well knowing the same to have been falsely made, altered, forged, or counterfeited: Contrary to the form, force, and effect of the Act

of Congress in such case made and provided, and against the peace and dignity of the United States.

JOHN C. LEHR,
*United States Attorney.*
(Signed) FRANCIS X. NORRIS,
*Assistant United States Attorney.*

This is a true bill.

(Signed) HARRY KOLTS, *Foreman.*

5 In United States District Court

[Title omitted.]

*Arraignment*

November 2, 1944

The defendant Paul Davis Sheridan, with aliases, being present in Court with his attorney Allen M. Thompson, and being arraigned on the indictment heretofore filed against him, waives the reading thereof and stands mute, whereupon a plea of not guilty is ordered entered by the Court.

Bail for said defendant is fixed at the penal sum of Two Thousand ($2,000.00) Dollars.

(Signed) FRANK A. PICARD,
*U. S. District Judge.*

6 In United States District Court

[Title omitted.]

*Appearance for defendant*

Filed November 7, 1944

To GEORGE M. READ, Esq.,
*703 Federal Building,*
*Clerk of the above Court.*

Please enter the appearance of LeRoy Payne and Allan M. Thompson, as attorneys for Paul Davis Sheridan, in the above cause.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
*2101 Barlum Tower, Detroit 26, Michigan,*
*Cadillac 0109.*

To JOHN C. LEHR, *United States Attorney.*
FRANK X NORRIS, *Assistant United States Attorney.*

Each of you will please notice that the undersigned have this day entered their appearance as attorneys for Paul Davis Sheridan, defendant in the above cause, and demand is made that the undersigned be given notice of all further proceedings.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
*2101 Barlum Tower, Detroit 26, Michigan.*

Dated November 4, 1944.

8 In United States District Court

[Title omitted.]

*Resignation of attorneys for defendant*

Comes now LeRoy Payne and Allan M. Thompson, Attorneys of record for the above named defendant Paul Davis Sheridan and hereby resign as such attorneys for defendant.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
*Attorneys for Defendant.*

The foregoing resignation is hereby accepted.

(Signed) PAUL DAVIS SHERIDAN,
*Defendant.*

Dated November 16th, 1944.

9 In United States District Court

[Title omitted.]

*Jury record*

Filed November 29, 1944

The parties in this cause being present in Court, ready for trial and trial ordered, thereupon comes a jury, to wit:

1. Caroline Lane
2. Laura G. Calwell
3. William J. Hubble
4. Gloria Northcross
5. Adele J. Ball
6. Dorothy E. Cummings
7. Frances A. Ormsby
8. Carrie Sparling
9. Sabria P. Lamb
10. Elizabeth B. Shields
11. Frank A. Barlage, Jr.
12. Mary L. Evans

who being duly empanelled and sworn well and truly to try the issue joined, sit together to hear the statements of counsel, proofs and testimony introduced.

Examined, approved, and ordered entered.

(Signed) FRANK A. PICARD,
*U. S. District Judge.*

10 In United States District Court

[Title omitted.]

*Waiver of assignment of counsel*

Filed November 29, 1944

This has been misplaced or lost. Although careful search has been made it cannot be found.

11 In United States District Court

[Title omitted.]

*Jury verdict*

Filed November 30, 1944

The defendant Paul Davis Sheridan, with aliases, being present in Court, and the jury heretofore empaneled being again in Court and having heard the proofs and testimony of witnesses, the arguments of counsel and the charge of the Court, retire from the Bar thereof under the charge of officers duly sworn for that purpose, to consider their verdict, and after being absent for a time come into Court again, and in the presence of said defendant say upon their oaths that they find the said defendant Paul Davis Sheridan, with aliases, guilty of the charges in the indictment filed herein.

Examined, approved, and ordered entered.

(Signed) FRANK A. PICARD,
*U. S. District Judge.*

12 In The District Court of the United States for the Eastern District of Michigan, Southern Division

No. 27992

UNITED STATES OF AMERICA,

*vs.*

PAUL DAVIS SHERIDAN, alias P. H. D. SHERIDAN, alias PAUL H. SHERIDAN, alias A. J. SLOANE, alias PHILIP H. SLOANE, alias ARTHUR SLOAN, alias ANDREW SLOANE, JR., alias LAIRD H. McDONALD, alias DONALD HOUGH

*Judgment and sentence*

Filed November 30, 1944

The defendant, Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloane, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, being present in Court, and having been fully informed of his constitutional right to counsel, and having been asked whether he desired counsel assigned, and having stated he did not desire the assistance of counsel, and the defendant having desired to plead his own case, and having been found guilty by jury of the charges in said indictment contained and now being before the bar of the Court for sentence and inquired of by the Court if he had anything to say why sentence should not be imposed, and the Court having fully considered all that said defendant had to say in his behalf, thereupon the court does now sentence said defendant to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment as follows:

Under Count 1, imprisonment in a Penitentiary for and during the term and period of (5) five years.

Under Count 2, imprisonment in a Penitentiary for and during the term and period of (5) five years, and

Under Count 3, imprisonment in a Penitentiary for and during the term and period of (5) five years, said terms of imprisonment to run concurrently, beginning on the date on which he is received at the Penitentiary for service of said sentence, or if said prisoner shall be committed to a Jail or other place of deten-

tion to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such jail or other place of detention.

(Signed) FRANK A. PICARD,
*United States District Judge.*

Approved as to form:

(Signed) FRANCIS X. NORRIS,
*Assistant United States District Attorney.*

13 In United States District Court

[Title omitted.]

*Motion for a new trial*

Filed December 2, 1944

Comes now the defendant in the above entitled cause and respectfully petitions of your Honorable Court that a new trial be granted.

Said petition is based upon the following facts and allegations:

1. Defendant respectfully submits that he was not granted sufficient time for the proper preparation of his case. He was taken from the Wayne County Jail at eleven A. M. on the 29th day of November 1944 and was required to proceed to trial at two P. M. of the same day. No other notice of the trial date had been furnished the defendant.

2. Defendant respectfully submits that he has new and additional evident which if presented to the jury would result in a different verdict favorable to the defendant. Defendant respectfully shows that there was no lack of diligence on his part and that this situation is the result of the fact that he was not granted sufficient time to prepare his case and to bring witnesses from distant cities.

14 3. Defendant respectfully alleges that the Trial Court erred in refusing to grant a severance of Count 3 which constitutes and alleges an offense entirely foreign to that charged in Counts 1 and 2 of the indictment.

4. Defendant respectfully submits that all evidence introduced concerning Count 3 was prejudicial to the defense of the defendant in Counts 1 and 2.

5. Defendant respectfully submits that the plaintiff failed to establish a prima facie case of the material elements alleged in the indictment, to wit: That the said securities were falsely made, forged, or altered and were in fact transported in interstate commerce between the States of Michigan and Missouri and between the States of Michigan and Massachusetts.

6. Defendant respectfully submits that no direct evidence was introduced to show that said securities were at any time transported in interstate commerce.

7. Defendant respectfully submits that the notices and printed stickers attached to plaintiff's Exhibits Numbers 2, 3, and 4, which were admitted into evidence over the objection of the defendant, were improperly and illegally introduced because they do not contain the certification that said stickers and notices were executed by persons of proper authority and were in fact placed upon said securities by unknown persons.

8. Defendant respectfully submits that he was denied his constitutional right to be confronted by witnesses from either the First National Bank of Cape Girardeau or the First National Bank of Boston, Massachusetts, or by representatives of the United States Department of Commerce.

9. Defendant respectfully submits that the Court erred in admitting in evidence the testimony of one Charles E. Green of the National Bank of Jackson, Michigan, concerning securities identified as Exhibits 2 and 3, all of said testimony being hearsay.

10. Defendant respectfully submits that the Court erred in admitting into testimony, over the objections of the defendant, the testimony of one Fred E. Foster, a police officer of Jackson, Michigan, concerning the alleged arrest of the defendant, whereas, in fact, all such testimony constituted hearsay.

11. Defendant respectfully submits that the Court erred in admitting the testimony of one John W. Wolfe of the Federal Bureau of Investigation concerning an alleged investigation in Washington, D. C., of which he had no personal knowledge and because all such testimony was hearsay.

12. Defendant respectfully submits that the Trial Court erred in refusing to admit into evidence the defendant's bank book of the First National Bank of Boston, Massachusetts, previously identified by one Robert V. Green; said bank book containing the identifying signature of the defendant and deposits in said bank as follows:

| | |
|---|---|
| June 5, 1943 | $1,250.00 |
| June 7, 1943 | 341.85 |
| June 14, 1943 | 841.70 |
| July 3, 1943 | 604.95 |

The defendant was charged with and convicted of the offense of issuing a bank check drawn against the said bank and refusal of the Court to admit primary evidence was prejudicial to defendant's case.

13. Defendant respectfully submits that the Trial Court erred in refusing to admit into evidence a bank book issued to the defendant by the Chase National Bank of the City of New York, indicating numerous deposits totalling Five Thousand One Hun-

dred Twenty-two Dollars and Thirty-five cents ($5,122.35) after the said bank book had been properly identified by one Robert V. Green.

16 14. Defendant respectfully submits that the Trial Court erred in refusing to give defendant's requested instruction concerning expert witnesses to the effect that such testimony should be considered by the jury only as an opinion and not as direct testimony.

15. Defendant respectfully submits that the Trial Court erred in failing to give instructions to the jury to the effect that the evidence concerning Count 3 was not applicable to Counts 1 and 2 of the Information.

16. Defendant respectfully submits that the Trial Court erred in instructing the jury that two of the three requisites of the indictment, to wit, first, that the defendant did in fact transport or cause to be transported in interstate commerce certain securities; and secondly, that said securities actually were transported in interstate commerce, whereas there was no evidence supporting this contention.

Wherefore, the defendant respectfully pleads that a new trial be granted in the above entitled cause and that the judgment of conviction rendered be vacated and set aside.

Respectfully submitted.

(Signed) PAUL DAVIS SHERIDAN,
*Attorney in Propria Persona.*

Dated: This 2nd day of December A. D., 1944.

18 In United States District Court

[Title omitted.]

*Memorandum in support of motion for a new trial*

Filed December 12, 1944

To the Honorable FRANK A. PICARD, *Judge of the United States District Court for the Eastern District of Michigan, Southern Division:*

Comes now the Defendant, and in support of his Motion for a new trial made on the 3rd day of December 1944, respectfully shows the Court:

1. The new and additional evidence which the defendant could have obtained had he been granted sufficient time, would have consisted of the following:

(a) The Manager of the Edgewater Beach Hotel, 5319 Sheridan Road, Chicago, Illinois, will testify that the Defendant was a guest of the said hotel, and that he had luncheon at the said hotel at approximately 1:00 o'clock p. m. on the 17th day of July 1943;

(b) The Manager of the Deerpath Inn, Deerpath Road, Lake Forest, Illinois, will testify that the Defendant, in the company of Lt. Col. James S. Pickett, U. S. M. C., was present at that hotel at approximately 5:00 o'clock p. m. on the afternoon of July 19, 1943;

(c) The Manager of the Schroeder Hotel, Milwaukee, Wisconsin, will testify that the Defendant, in the company of the aforementioned Lt. Col. Pickett, checked into the said hotel at approximately 9:00 o'clock p. m. on July 17, 1943, and remained in said hotel as a guest until noon of the following day. The porter of said hotel will further testify that he obtained transportation on the Northwestern Railway "400" train to Eau Claire, Wisconsin.

(d) The Manager of the Eau Claire Hotel, Eau Claire, Wisconsin, will testify that the Defendant, in the company of Lt. Col. Pickett, checked into the Eau Claire Hotel at approximately 9:30 on July 18, 1943;

(e) Mr. James Hutchins, Vice President and General Manager of the United States Rubber Company (Gillette Division), Eau Claire, Wisconsin, will testify that the Defendant signed a guest register in the office of the said Company at approximately 1:00 o'clock p. m. on the 19th day of July 1943; this being a war plant, and full identification and signature of each visitor being required.

Wherefore, the Defendant respectfully submits that the above testimony would completely and absolutely establish an alibi and contravert the testimony given at the trial in this case.

The Defendant has forwarded to the First National Bank of Boston, Massachusetts, and to the Chase National Bank of the City of New York, two bank books for certification, together with a request to the attorneys in that city, that they obtain depositions concerning the bank accounts which figured in this trial. Additional evidence also could not have been obtained within the short period of time granted the Defendant for the preparation of this case.

Respectfully submitted.

(Signed) PAUL DAVIS SHERIDAN,
*Attorney in Propria Persona.*

20 In United States District Court

[Title omitted.]

*Affidavit in opposition to defendant's motion for new trial*

Filed December 12, 1944

STATE OF MICHIGAN,
*County of Wayne, ss:*

Francis X. Norris, Assistant United States Attorney for the Eastern District of Michigan, having been first duly sworn, deposes and says, that as such Assistant United States Attorney, he was assigned to the above-entitled cause, and personally conducted the prosecution of this defendant.

That this defendant was represented by a member of the Bar of this Court, Mr. Allan M. Thompson at the time of his examination before J. Stanley Hurd, United States Commissioner for this District, and that Mr. Thompson continued to represent this defendant up to, and including the day of his arraignment, upon the indictment November 2, 1944.

That at that time, this defendant, and his Attorney were advised that this case would proceed to trial at an early date, as the defendant was then in custody, and apparently unable to procure bond.

That Mr. Thompson thereafter, on November 16, 1944, withdrew his appearance as attorney for the defendant, and thereafter on November 20, 1944, the defendant in open court, refused the court's offer to appoint counsel to assist in his defense. He advised the Court that he wished to conduct his own case. The Court then urged that he prepare for trial.

That during the morning of November 29, 1944, the defendant assured this affiant, that he was ready for trial; that his
21 wife was in contact with him and had summoned a number of witnesses, that one of them was an Attorney, and that all of the witnesses, including the attorney, were then enroute to the City of Detroit, Michigan.

That the defendant stated he needed no assistance in the matter of procuring the attendance of witnesses, suggesting that a jury be empaneled that day, and proofs be introduced the following morning, November 30, 1944.

That pursuant to agreement, this was done, the Government completing the introduction of its evidence November 30, 1944, at about 11:15 A. M.

That about the hour 11 A. M. that morning, the Court called the defendant to the bench, and in the presence of this affiant, asked the defendant if he was ready to proceed. The defendant

assured the Court that he was ready with seven alibi witnesses and that they would arrive momentarily.

That the Government, having rested its case, the defendant thereupon stated to the Court that he also rested. That never at any time did this defendant request the Court or counsel for the Government for additional time to summon witnesses or prepare his defense, but on the contrary, stated repeatedly, that he was ready to proceed.

That this defendant stated to this affiant, and the Court, that he would establish an alibi in his defense of this case, that he was never in the City of Jackson, Michigan (where the checks were cashed) during his life. He offered no such testimony, and indeed admitted responsibility for the endorsements appearing on the checks, and the actual cashing of these worthless obligations.

In the cross-examination of the witness, Robert V. Green, one of the three persons defrauded, it was brought out that, at the time the check was presented to Mr. Green, the defendant produced and exhibited two bank books. An attempt was made to have the witness identify two bank books which the defendant produced from his person as the same two bank books which were upon him at the time the check was presented. The witness was unable to identify the books, admitting, however, that there were two bank books presented to him by the defendant in identifying himself at the time the check was cashed.

22 That the defendant was not sworn as a witness in the case, and no further attempt was made to properly identify the bank books produced from the person of the defendant during the trial, and said bank books were never offered in evidence in the case.

That the three counts of this indictment referred to three separate checks. That the Government introduced evidence under each count establishing every essential element of the offense charged, namely: that this defendant presented each of the three checks for payment, that each check was drawn on a foreign bank, that each check was returned from that bank marked "no account," that restitution was not made in any instant, and that each of the persons that accepted these checks were defrauded in the amount set forth in the indictment.

Further deponent saith not.

(Signed) FRANCIS X. NORRIS,
*Assistant U. S. Attorney.*

Subscribed and sworn to before me this 5th day of December A. D. 1944.

(Signed) JOHN E. RAY,
*Notary Public, Wayne County, Michigan.*

My commission expires February 24, 1945.

23 In United States District Court

[Title omitted.]

*Order denying defendant's motion for a new trial*

Filed December 12, 1944

This cause having come on for hearing upon the defendant's motion for a new trial and the Court having considered said motion and the affidavit filed by the Government in opposition to the motion and being duly advised in the premises, finds specifically, that the instant motion has not been made in good faith inasmuch as the instant case was defended on the theory that this defendant was present in the City of Jackson, Michigan at the time the checks in question were cashed.

Wherefore, it is ordered that the said motion be and the same is hereby denied.

(Signed) FRANK A. PICARD,
*United States District Judge.*

24 In United States District Court

[Title omitted.]

*Notice of appeal*

Filed December 12, 1944

The defendant, Paul Sheridan hereby gives notice that he appeals to the United States District Court of Appeals, Sixth Circuit, from the order of the Court entered in the above entitled cause, denying the defendant's motion for a new trial and from the judgment of conviction entered herein.

Defendant's appeal will be based upon the following facts and allegations:

1. That the Trial Court erred in matters of law during the course of the trial.
2. That the verdict of the jury is contrary to the evidence.
3. That the verdict of the jury is not supported by sufficient evidence.

25 4. That the Trial Court erred in admitting certain testimony and documents into evidence over the objection of the defendant.

5. That the defendant was denied his constitutional rights to be confronted by witnesses.

6. That the plaintiff did not establish a prima facie case to the effect that the defendant did unlawfully, knowingly and feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the city of Jackson in the State of Michigan to the city of Cape Girardeaux in the State of Missouri, or from the City of Jackson in the State of Michigan to the City of Boston, in the State of Massachusetts certain falsely made, forged, altered or counterfeit securities.

7. That the Court erred in giving certain instructions to the jury and in refusing to give certain instructions requested by the defendant.

(Signed) PAUL DAVIS SHERIDAN,
*Attorney in Propria Persona.*

Dated: This 12th day of December 1944.

26 *Certificate of designation*

I, the undersigned, authorized representative of the Attorney General of the United States of America, hereby designate United States Penitentiary, Terre Haute, Ind., as the place of confinement wherein the said Defendant shall serve the sentence herein imposed.

Dated: Nov. 30, 1944.

JOHN J. BARC,
*United States Marshal,*
Authorized Representative of the
Attorney General of the United States.

I have executed the within writ in the manner following: to wit: On Nov. 30, 1944, I delivered said Paul Davis Sheridan to the Jailer of the Wayne County Jail, Detroit, temporarily pending transfer to the institution herein designated for the service of sentence, and on December 26, 1944, I delivered said Paul Davis Sheridan to the Warden of United States Penitentiary at Terre Haute, Ind., together with a copy of this commitment.

JOHN J. BARC,
*United States Marshal.*
By (Signed) JOHN W. INGRAM,
*Deputy.*

27 In United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

[Title omitted.]

*Order granting leave to proceed in forma pauperis*

Filed February 10 1945

The motion of appellant for leave to proceed in forma pauperis is granted and appellant is directed to file four legible typewritten copies of the record on appeal and of his brief.

Approved for Entry:

[SEAL] XEN HICKS, *Circuit Judge.*

A true copy.
Attest.

(Signed) J. W. MENZIES,
*Clerk, U. S. C. C. A., Sixth Circuit.*

28 [Clerk's certificate to foregoing transcript omitted in printing.]

30 In United States District Court

[Title omitted.]

*Order to transmit exhibits*

Filed May 28, 1945

Upon reading and filing the Stipulation entered into between Paul Davis Sheridan, defendant and appellant, and John C. Lehr, United States Attorney and Francis X. Norris, Assistant United States Attorney, counsel for the United States of America, that Government's exhibits 2, 3, and 4 be deposited with the Clerk of the Court to be forwarded to the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio, to be considered by said Court as physical exhibits;

Wherefore, it is ordered and the Clerk of this Court is directed to accept Government's exhibits 2, 3, and 4 and to forward the same to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio, in accordance with the stipulation entered into by respective parties.

FRANK A. PICARD,
*United States District Judge.*

31 In United States District Court

[Title omitted.]

*Stipulation re exhibits*

It is hereby stipulated by and between Paul Davis Sheridan, defendant and appellant herein, and John C. Lehr, United States Attorney, and Francis X. Norris, Assistant United States Attorney, counsel for the United States of America, that original Government exhibits numbered 2 and 4 and photostatic copy of Government exhibit number 3 be deposited with the Clerk of the Court and be forwarded by said Clerk of the Court to the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio to be considered by said Court as physical exhibits in said cause.

JOHN C. LEHR,
*United States Attorney.*
FRANCIS X. NORRIS,
*Assistant U. S. Attorney.*
PAUL DAVIS SHERIDAN,
*Defendant and Appellant.*

Dated this 9th day of May 1945.

32 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

PAUL DAVIS SHERIDAN, APPELLANT

*vs.*

UNITED STATES OF AMERICA, APPELLEE

*Statement of evidence*

Filed May 28, 1945

33 GOVERNMENT'S TESTIMONY

Harriett Whiteman, testified that for the past three years she has been the Chief Clerk of the Otsego Hotel, Jackson, Michigan, and that the defendant, whom she identified in Open Court, checked into the said Otsego Hotel in the evening of Sunday, the 18th day of July 1943. (Exhibit #1, a hotel registration card, admitted without objection.)

She further testified that at an unspecified hour on Monday, July 19th, 1943, the defendant checked out of the hotel, and at that time presented a check of ($50.00) fifty dollars, dated July

18, 1943, drawn on the "First National Bank of Boston, Massachusetts," payable to "Cash" and bearing the endorsement, "P. H. D. Sheridan, 230 Park Avenue, New York." (Exhibit #2, a check was identified and admitted into evidence over defendant's objection.)

Miss Whiteman also testified that she did not see the Defendant endorse the check; but that she cashed the same, deducting a hotel bill of ($3.50) paying the defendant ($46.50) in cash and that she next saw the check when it was given to her by the hotel auditor. It then bore the same endorsements as appeared upon it when offered in evidence. That the check was returned to the hotel unpaid and that the hotel had never been reimbursed for the loss.

Robert V. Green, testified that he is the Manager of the Young's Jewelery Store in Jackson, Michigan, and that the Defendant, whom he identified in Open Court, came into the Young's jewelery story in Jackson, Michigan, at about noon on Monday, July 19th, 1943, and looked at some luggage which he wished to buy for his son at Camp Custer, Michigan. Mr. Green testified that the defendant selected two articles of luggage valued at $36.00, and presented in payment a check for ($62.50) drawn on the "First National Bank of Cape Girardeau, Missouri," dated July 15, 1943, payable to "P. H. D. Sheridan" and signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner," which check it was
34 stated had been received in the course of his business. (Exhibit #3, a check was identified and admitted into evidence over Defendant's objection.)

The witness further stated that the defendant at the time the check was presented showed two bank books. He stated that he did not see the defendant endorse the check, but that he accepted it in payment of the luggage valued at $36.00, paying the defendant $26.50 in change, and that he deposited the check in the Jackson Bank and Trust Company of Jackson, Michigan, and that said check was later returned unpaid, and that his employer has never been reimbursed for the loss.

Upon cross-examination the witness affirmed his previous identification of the defendant. Upon being shown two bank books the witness could not identify them as being the two bank books shown to him by the defendant at the time the Exhibit #3 was presented to him for payment. (Defendant's motion to have the said bank books admitted into evidence was denied by the Court.)

Charles E. Greene testified that he has been employed by the National Bank of Jackson, Michigan, for the past twenty years and is an Assistant Cashier of the said bank. He stated that about noon on Monday, the 19th day of July 1943, the defendant, whom he identified in open Court, came into the bank and presented a

check for $62.50 dated July 15, 1943, payable to "P. H. D. Sheridan," signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" drawn against the "First National Bank of Cape Girardeau, Missouri." (The check was marked "Exhibit #4," identified and admitted into evidence over defendant's objection.) Mr. Greene further testified that he accompanied the Defendant to a Paying Teller's window in the bank; that he placed his initials on the face of the check in approval of its payment. The witness further testified that the Paying Teller of the bank thereupon paid the Defendant $62.50 in cash, that the records of the bank showed said check was forwarded to the bank upon which it was drawn for payment and that the check was later returned to a basket on his desk in the bank marked unpaid. He further testified that the bank had not been reimbursed for the loss.

35 Mr. Greene was qualified as an expert on banking matters. He read to the jury the various rubber stamp endorsements appearing on the reverse side of the three checks and stated that from the endorsements on the three checks, Exhibits #2, #3, and #4, all were presented for payment at Jackson, Michigan, that Exhibit #2 had been forwarded to Boston, Massachusetts, and Exhibits #3 and #4 had been forwarded to Missouri, and all three checks had been returned unpaid to the forwarding bank marked no account. This testimony was taken over defendant's objection.

On cross-examination the witness admitted that only one of the three checks was deposited in his employer bank in Jackson, Michigan; that he did not know of his own personal knowledge who wrote the words "No Account" on the face of the checks or on the printed documents attached thereto, and that he did not know who placed the endorsements on the reverse side of the checks.

Fred E. Foster; testified that he is a Police Officer employed by the City of Jackson, Michigan, and stated that in July 1943, he was called upon to investigate the transactions in Jackson, Michigan, of one "P. H. D. Sheridan" and that he had learned through Police Channels that the defendant had been arrested in Eau Claire, Wisconsin, on the 20th day of July 1943. (Objection by defendant on grounds of hearsay.)

On cross-examination the witness admitted that he had never seen nor talked to the Defendant, at any time prior to defendant's examination before the United States Commissioner in Detroit, Michigan on October 20th, 1944.

John W. Wolfe: testified that he is an Agent of the Federal Bureau of Investigation, that his office had conducted an investigation in Washington, D. C., and that the United States Department of Commerce has no agency "U. S. E. F. C. 14A," or one "A. J. Davis, Commissioner." (Objection by defendant that such testimony constituted hearsay.)

On cross-examination the witness admitted that the Defendant was not present during said investigation in Washington,
36 D. C., and that he, the witness, had not personally conducted said investigation, and based his statements on reports prepared by his Department.

*Order denying motion to dismiss*

The Defendant's motion to dismiss the case on the grounds that the Plaintiff had failed to establish that the checks were in fact false, and that the checks were in fact transported in Interstate Commerce, Denied by the Court.

Defendant's motion to keep from the jury various aliases set forth in the indictment as prejudicial, was granted by the Court.

The Plaintiff thereupon closed.

The defendant closed without offering any evidence.

37 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

[Title omitted.]

*Stipulation as to statement of evidence*

It is hereby stipulated and agreed by and between Paul Davis Sheridan, appellant and John C. Lehr, United States Attorney for the Eastern District of Michigan and Francis X. Norris, Assistant United States Attorney for said District, attorneys for the United States of America, the instant case not having been stenographically reported that the foregoing statement of evidence consisting of four pages prepared from memory and notes made during the course of the trial, substantially sets forth the testimony and evidence presented and that the same, upon the Court's approval be made a supplementary part of the transcript of record filed in the above entitled cause.

PAUL DAVIS SHERIDAN,
*Appellant in Propria Persona.*
JOHN C. LEHR,
*United States Attorney.*
FRANCIS X. NORRIS,
*Asst. U. S. Attorney,*
*Attorneys for Appellee.*

Dated this 28 day of May 1945.
Approved:

Frank A. Picard,
HON. FRANK A. PICARD,
*U. S. District Judge.*

38 [Clerk's certificate to foregoing transcript omitted in printing.]

39 In United States Circuit Court of Appeals, Sixth Circuit

*Cause argued and submitted*

October 5, 1945

(Before: ALLEN and MARTIN, Circuit Judges and RAYMOND, District Judge.)

This cause is argued by appellant, per se, and by Vincent Fordell for appellee and is submitted to the court.

In United States Circuit Court of Appeals

*Judgment*

Entered November 19, 1945

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be and the same is hereby reversed and remanded with direction that the case be dismissed.

40 In United States Circuit Court of Appeals, Sixth Circuit

No. 9970

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PAUL DAVIS SHERIDAN, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Eastern District of Michigan

Decided November 19, 1945

Before ALLEN and MARTIN, Circuit Judges, and RAYMOND, District Judge.

*Opinion*

MARTIN, Circuit Judge. Upon his trial in the district court for alleged violation of the National Stolen Property Act, U. S.

C. A., Title 18, Sec. 415, Paul Davis Sheridan waived counsel proffered him by the trial court and chose to defend himself. He was convicted by the verdict of a jury and was sentenced by the district judge to concurrent terms of imprisonment of five years on each of the three counts of the indictment.

From the indictment and from the approved stipulated statement of evidence filed as a supplemental transcript of record, it appears that; on July 19, 1943, Sheridan obtained money and other value by negotiating in Jackson, Michigan, three falsely made checks. On Sunday evening, July 18, 1943, he registered at the Otsego Hotel in that city. On the next day, when checking out of the hotel at an unspecified hour, Sheridan presented to its chief clerk a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to cash, signed as maker by P. H. D. Sheridan, and bearing the endorsement of "P. H. D. Sheridan, 230 Park Avenue, New York."[4] (After deducting $3.50 in payment of Sheridan's hotel bill, the hotel clerk gave him $46.50 in cash for the check, which later was returned unpaid to the hotel.

41 Around noon of the same day, Sheridan entered a jewelry store in Jackson and purchased from the manager, for $36.00, two articles of luggage which he said he wished to buy for his son at Camp Custer, Michigan. He presented in payment a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan, and purporting to be signed as maker by "U. S. E. F. C. 14A A. J. Davis, Commissioner." When offering this check, Sheridan exhibited two bank books. The store manager did not see him endorse the check, but accepted it in payment for the luggage and handed him $26.50 in change. The check, deposited by the jeweler in the Jackson Bank and Trust Company, was later returned unpaid.

The third transaction, also around noon of July 19, 1943, embraced in one of the three counts of the indictment, was the obtaining by Sheridan of $62.50, in cash, by presentation to the National Bank of Jackson of a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by "U. S. E. F. C. 14A A. J. Davis, Commissioner." The records of the bank show that the check was forwarded for payment to the bank upon which it was drawn and was later returned marked "unpaid" to a basket on the desk of the assistant cashier of the National Bank of Jackson, Michigan. This official, as an expert, explained to the jury the various rubber stamp endorsements appearing on the three checks described in the respective counts of the indictment, and testified that it was obvious

that all three checks had been forwarded to the drawee banks and had been returned to the forwarding banks unpaid, and marked: "No Account." The victims of Sheridan's transactions were not reimbursed for their losses.

An agent of the Federal Bureau of Investigation testified that, from an investigation conducted in Washington, D. C., it was ascertained that the United States Department of Commerce has no such agency as "U. S. E. F. C. 14A," and that "A. J. Davis, Commissioner," is a nonexistent person.

Sheridan cross-examined the Government's witnesses, but did not take the stand in his own behalf. When the district attorney rested, the defendant moved that the case be dismissed on the ground that the Government had failed to establish that the checks involved were in fact false, and upon the further
42 ground that the checks had not been transported, or caused to be transported, by him in interstate commerce within the meaning of the Federal statute upon which the indictment was based. The motion to dismiss was denied.

A motion for new trial, subsequently made, was overruled; and, on this appeal from the judgment of sentence and conviction below, Sheridan presents the same points which he urged in the trial court. Only one of these assignments of error need be discussed. The vital issue which he raises is that he was improperly convicted under U. S. C. A., Title 18, Section 415,[1] of transporting or causing to be transported in interstate commerce falsely made securities, where the evidence discloses that "the only use of interstate commerce was by banks which, after cashing certain checks, transported them to obtain reimbursement."

Sheridan preferred to represent himself personally on his appeal to this court, and was permitted to appear in propria persona at the hearing. He made an oral argument and has filed three briefs in support of his points on appeal. He insists that his conviction and sentence should be set aside upon the controlling authority of Kann v. United States, 323 U. S. 88, decided on December 4, 1944, since he was tried and sentenced in the district

[1] Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited*, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering or counterfeiting any security, or any part thereof, *shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: Provided*, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 261 of this title or (2) an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any "foreign government" as defined in section 288 of this title, or by a bank or corporation of any foreign country. May 22, 1934, c. 333, Sec. 3, 48 Stat. 794, as amended Aug. 3, 1939, c. 413, sec. 1, 53 Stat. 1178. [Italics supplied.]

court. In that case, the Supreme Court, in a five to four decision, reversed a conviction under the Mail Fraud Statute [U. S. C. A., Title 18, Sec. 338], upon the ground that an essential element of the offense is that the mails be used for the purpose of
43 executing the fraudulent scheme; and that, the participants in the scheme having obtained money by cashing checks at banks which thereupon became holders in due course, subsequent mailings of the checks by the banks to the drawees were not for the purpose of executing the scheme within the meaning of the statute.

Considering it a fair inference that the defendants who drew the checks and those who cashed them believed that the banks which took them would mail them to the banks on which they were drawn, the Supreme Court, nevertheless, said [323 U. S. 94]: "The banks which cashed or credited the checks, being holders in due course, were entitled to collect from the drawee bank in each case and the drawer had no defense to payment. The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank. It cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires." The following authorities were cited: McNear v. United States, 60 F. (2d) 861 (C. C. A. 10); Dyhre v. Hudspeth, 106 F. (2d) 286 (C. C. A. 10); Stapp v. United States, 120 F. (2d) 898 (C. C. A. 5); United States v. McKay, 45 F. Supp. 1001 (opinion of District Judge Miller, sitting by designation in the Eastern District of Michigan). The Supreme Court stated further that cases such as United States v. Kenofskey, 243 U. S. 440, where the mails are used prior to and as one step toward the receipt of the fruits of the fraud, were to be distinguished, as were likewise those where the use of the mails is a means of concealment so that further frauds which are part of the scheme may be perpetrated. Examples were cited: United States v. Lowe, 115 F. (2d) 596 (C. C. A. 7); United States v. Riedel, 126 F. (2d) 81 (C. C. A. 7); Dunham v. United States, 125 F. (2d) 895 (C. C. A. 5).

The dissenting Justices in the Kann case were of opinion that the fraudulent scheme had not reached fruition at the time the collecting bank cashed the checks, but that it was a continuing venture, and that the use of the mails was crucial to its total success.

In the aspect of both the majority and the minority views as expressed in the Kann case, that authority would plainly indicate that the judgment of sentence and conviction should be reversed in the instant case. Here, Sheridan obtained the full fruits of

his fraud without the use of the United States mails or
44 any other means of interstate transportation. His fraudulent scheme had been fully consummated before there was any interstate transportation of the falsely made checks, defined as securities within the sweep of the statute. It is no more logical to say that Sheridan caused the checks to be transported in interstate commerce than it would have been to say that the conspiring defendants in the Kann case caused the checks to be mailed for the purpose of executing their fraudulent scheme; inasmuch as the victims cashed the checks falsely made by Sheridan and became holders in due course, just as did the banks which cashed or credited the checks in the Kann case.

The point made by the Government that the language of the two statutes is different seems immaterial; for, in the one, mailing or causing to be mailed is the gist of the offense, and in the other transporting or causing to be transported in interstate commerce is the essential ingredient of the crime. As was said in Pine v. United States, 123 F. (2d) 825, 829 (C. C. A. 8): "The gist of the offense, however, is the transportation of these described spurious instruments in interstate commerce. Having them in possession or even attempting to pass them as genuine was not a Federal offense under this statute. It was therefore of vital importance to prove that the instruments were transported or caused to be transported by someone in interstate commerce." In that case, the record on review was found to disclose insufficient evidence of interstate transportation to constitute proof of the corpus delicti, and accordingly it was held that the trial court should have granted the motion of the defendant for a directed verdict. The same is true here. The frauds perpetrated by Sheridan may be punishable as crimes by the laws of Michigan, but are not cognizable under Federal law.

The judgment of conviction and sentence is reversed, with direction that the case be dismissed.

45 In United States Circuit Court of Appeals

*Order extending time*

Filed December 8, 1945

The petition of the United States Attorney for the Eastern District of Michigan, for extension of time to December 31, 1945, in which to file a petition for rehearing, is granted, upon the express condition that the appellant prisoner, Paul Davis Sheridan, shall not be held in custody pending the hearing of and action on such petition. This court, in its opinion filed November 19, 1945, reversed, upon the authority of Kann v. United States,

323 U. S. 88, the judgment and sentence, and directed that the case be dismissed. Accordingly, the appellant, Paul Davis Sheridan, should not be held in further custody pending disposition of the Government's petition for rehearing, or its petition to the Supreme Court for certiorari, should any such petition be hereinafter filed.

47 In the United States Circuit Court of Appeals
for the Sixth Circuit

[Title omitted.]

*Petition for rehearing*

Filed Dec. 29, 1945

Comes now the United States, by its attorneys, and respectfully prays that the judgment entered in this case on November 19, 1945, be vacated and that a rehearing be granted. On November 19, 1945, this Court rendered its opinion reversing the conviction of the appellant. Subsequently, the Government filed a petition for extension of time in which to file a Petition for Rehearing. This Petition was granted, extending the time to file a Petition for Rehearing to December 31, 1945, upon the express condition that the appellant was to be released from custody pending the hearing of and action on such Petition. The appellant has been released in compliance with the conditions expressed by this Court in its Order of December 3, 1945. The release of the appellant from the Federal Correctional Institution at Milan, Michigan, was effected on the 14th day of December 1945.

The first Count of the indictment in this case charges, in substance, that the appellant on the nineteenth day of July
48 A. D. 1943, at the City of Jackson, unlawfully transport and/or cause to be transported in Interstate Commerce from the City of Jackson, Michigan, to the City of Cape Girardeau, Missouri, a certain falsely made, forged, and counterfeited security, to wit: a check in the amount of $62.50, payable to P. H. D. Sheridan and purporting to have been signed as maker U. S. E. F. C., 14 A, A. J. Davis, Commissioner, the said check being drawn on the First National Bank, Cape Girardeau, Missouri, said appellant knowing the same to have been falsely made, forged, and counterfeited.

The second Count charges, in substance, that the appellant did on the 19th day of July 1943, at the City of Jackson, Michigan, unlawfully transport and/or cause to be transported in Interstate Commerce from the City of Jackson, Michigan, to the City of Cape Girardeau, Missouri, falsely made, forged, and counterfeited

security, to wit: a check in the amount of $62.50, dated July 15, 1943, drawn on the First National Bank, Cape Girardeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by U. S. E. F. C. 14 A, A. J. Davis, Commissioner, the said appellant knowing same to be falsely made, forged, or counterfeited.

The third Count charges, in substance, that appellant did on the 19th day of July 1943, at the City of Jackson, Michigan, unlawfully transport and/or cause to be transported in interstate commerce from the City of Jackson, Michigan, to the City of Boston, Massachusetts, a certain falsely made, forged, and counterfeited security, to wit: a check in the amount of $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to "Cash" and signed as maker by P. H. D. Sheridan, the said appellant knowing same to be falsely made, forged, or counterfeited. All three of these counts charge violations described in Title 18, U. S. C., Section 415, which reads in part and pertaining to the three violations of appellant:

"Whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, shall be punished by a fine of not more than $10,000.00 or by imprisonment for not more than 10 years, or both."

49 It is strongly urged again that the rule of law laid down by the Supreme Court in Kann vs. United States, 323 U. S. 88, has no application to the facts in the instant case. It is submitted that the Kann decision merely reiterated existing law to the effect that the gist of the offense prescribed by Title 18, U. S. C., Section 338, is the use of the mails in the furtherance or accomplishment of a scheme to defraud. The Supreme Court, conceding as to the second count in the indictment, that the defendant may have caused the mailing of the check, found that the defendant's check reached fruition and was consummated when the check was cashed and hence not a living, subsisting thing when the mailing occur'ed, nor was the subsequent introduction of the check into the mail by the acceptor a contributing factor to the furtherance or accomplishment of the defendant's check. The reversal of the conviction was predicated solely upon the absence or lack of a scheme to defraud at the time of the mailing, the Court rejecting the Government's argument that the incident was a part of a continuing scheme to defraud. The Court suggested, however, that this latter situation in some circumstances would be sufficient to sustain a prosecution.

It becomes axiomatic, therefore, that to constitute a violation under Section 338, the use of the mail and a scheme to defraud

thereby must be coexistent and are for all purposes indivisible.

The appellee emphatically urges to this Court that Section 415, for the violation of which the appellant was convicted, has no such requirement by design or implication. The application of the rule expressed in the Kann case was rejected by the Honorable Judge Underwood in the case of Tolle v. Sanford, decided January 25, 1945, and reported in 58 Fed. Supp. 695. In that case the indictment charged the defendant with violations of Section 415, Title 18, U. S. C. The facts in that case were substantially the same as those in the instant case. Judge Underwood emphasized the difference that existed between the mail fraud statute, Title 18, U. S. C. S., Sec. 338, which is involved in the Kann case, and Title 18, U. S. C. A., Section 415, which is involved in the instant case. He expressed the difference very clearly on page 696 where he stated:

50 "It will be seen, therefore, that the latter statute does not provide, as does the mail fraud statute, that the use of the mails shall be an integral part of the execution of the fraud, but merely provides that whoever with fraudulent intent causes the forged securities to be transported in interstate commerce, commits a Federal offense. The fact that the transportation took place after the petitioner had secured the fruits of his forgery is immaterial; since the interstate transportation of the contraband securities is the gist of the offense. The fact that petitioner forged and passed a check in one state upon a drawee bank in another made it, as he must have known and intended, absolutely necessary that the check be transmitted in interstate commerce, so, that fraudulent intent sufficiently appears."

Presumably the Congress of the United States in its wisdom and judgment had in mind the practice of persons engaged in the use of fraudulent checks and by Section 415, aimed to place an absolute prohibition on the traffic in interstate commerce of checks of the character involved in the case at bar. The gist of the offense is the movement of such securities in interstate commerce and under well settled principles of law one who causes events to occur prohibited under the statute is liable and accountable for initiating such chain of events. The Courts have repeatedly held that an offender must be held to have intended the necessary and direct consequences of his act, and cannot be heard to say the contrary. In other words, by committing an act which necessarily and directly produces the result which the statute is designed to prevent, he is in legal contemplation, chargeable with intending that result. See Williams v. United States, 295 Fed. 302, cert. den. 265 U. S. 591, United States v. Anderson, 101 F. (2d), cert. den. 307 U. S. 625, and also United States v. Giles, 300 U. S. 41.

It therefore follows that whoever utters a spurious and fraudulent check which in the natural course of events moves in interstate commerce is chargeable with the offense contemplated by Section 415.

We therefore respectfully urge that a rehearing in this case be granted.

JOHN C. LEHR,
*United States Attorney*
*Eastern District of Michigan.*
VINCENT FORDELL,
*Assistant U. S. Attorney.*
FRANCIS X. NORRIS,
*Assistant U. S. Attorney.*

51 Dated: December 28, 1945.

I certify that this Petition is presented in good faith and not for delay.

JOHN C. LEHR,
*United States Attorney,*
*Eastern District of Michigan.*

52 In United States Circuit Court of Appeals

*Order denying rehearing*

Filed January 28, 1946

The petition for rehearing is denied.

53 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

*Order allowing certiorari*

Filed May 13, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.